

specifically require to be included. Likewise, the foregoing costs do not include legal and engineering fees incurred in the prosecution of Bryan's Application, which he admitted were included in his total estimate of \$ 175,000.00 and which as of the date of his June, 1994 deposition totalled over \$ 40,000.00. Finally, the foregoing costs do not include the anticipated shortfall in proceeds from the sale of WSMG, a station whose assets (including accounts receivable and intangibles) at the time of certification and filing were valued at only \$ 135,556.90, while being pledged to secure a loan with a then outstanding balance of \$ 290,000.00.

125. Therefore, it must be concluded that, even had Bryan demonstrated the availability of the proposed loan from the Greene County Bank in the amount of \$ 175,000.00, he would have available insufficient funds to construct and operate the station he proposed for three months without revenue. Furthermore, even if the Bank's recent indication of willingness to permit the sale of WSMG for less than is owed on the station and to roll any shortfall into the FM loan were credited, this would neither render Bryan financially qualified at the time he so certified nor render him financially qualified today, inasmuch as: (a) the Bank had expressed no such willingness as of January 9, 1992, (b) there was no provision in the December 12, 1991 letter regarding the sale of WSMG, even if it had, and (c) even discounting the shortfall, \$ 175,000.00 is insufficient to meet Bryan's other costs, as established on the record. Finally, inasmuch as

Bryan's total estimated costs, as well as his total available funds, both equalled \$ 175,000.00, he had no surplus of funds, whatsoever, and, accordingly, to the extent that Bryan has understated any of his costs of construction or operation, and the record demonstrates that he has, it must be concluded that he has failed to establish the availability of sufficient funds to meet his costs at the time he certified and filed his Application.

#### IV. The Present Financial Qualifications Issue.

126. Given the fact that Bryan was not financially qualified at the time he filed his application on January 9, 1992, that deficiency may not be cured by any subsequent efforts or circumstances or on the basis of any subsequently obtained source of funds or commitment, including subsequently acquired documentation pertaining to any previous oral commitment.

Sunshine Broadcasting, Inc., 6 FCC Rcd. 5981 (RB 1991)(modified financial proposal cannot be relied upon in absence of showing that the applicant "had reasonable assurance of necessary financing at the time it filed its application," citing Aspen FM, Inc., 6 FCC Rcd. 1602, 1603 (1991); See also: REM Malloy Broadcasting, 6 FCC Rcd. 5843, 5844 (RB 1991); Marlin Broadcasting of Central Florida, Inc., 5 FCC Rcd. 5751 (1990)(applicant not financially qualified where failed to demonstrate "reasonable assurance" of financing at time application was filed). Accordingly, inasmuch as Bryan was not financially qualified at the time he so certified, he may not be

found to be financially qualified, currently.

127. Even if Bryan's lack of financial qualifications at the time of certification and filing did not preclude a current finding of financial qualifications, Bryan has not demonstrated the availability of sufficient funds to meet his costs of constructing and operating his proposed station for three months without revenue. Thus, even were Mr. Puckett's indication that the Bank would roll over any shortfall in the sale of WSMG into the FM loan fully credited and deemed sufficient to resolve the problem of the likelihood of a shortfall in the sale of WSMG, Puckett has not indicated any willingness to increase the amount of the loan to meet any other shortfall. Even discounting completely the problem of the sale of WSMG, the proposed \$ 175,000.00 loan is insufficient to meet Bryan's costs and he listed and, accordingly, may rely upon no other source. Therefore, even if Bryan's lack of financial qualifications at the time of certification and filing did not present a bar, it must be concluded that Bryan is not currently financially qualified, nevertheless.

V. The False Certification Issue.

128. It is clear that in developing his cost estimates and seeking to document a financial commitment from the Greene County Bank, Bryan was assisted by his then communications counsel, Rick Hayes. (Bryan Ex. 8) Accordingly, it must be presumed that at the time of certification Bryan was well aware of the Commission's financial certification requirements. Yet, Bryan

apparently ignored the explicit instructions to Section III of the June, 1989 ed. of FCC Form 301, which he utilized, and neither prepared the required current balance sheet nor obtained a letter from the Greene County Bank, setting forth the all of terms required to meet the Commission's documentation requirements. His efforts in determining his costs were equally ineffective. Despite admitting that price quotations could have been easily obtained, Bryan obtained none, either from the equipment suppliers he was familiar with or from any tower dealer or tower erection contractors. Even as of the date of his initial deposition he still had not determined what antenna/transmitter configuration he was proposing, despite the significant cost differences that could result. Despite being intimately familiar with the terms of the option agreement, Bryan failed to include the cost of purchasing his transmitter site. He relied extensively on equipment that he had "on hand" at WSMG, apparently without considering the fact that these were subject to the Bank's security interest and part of the assets of WSMG, which he was proposing to sell. Even at hearing, long after financial issues had been added, he still had not conducted any investigation to determine whether he could obtain a line of site path for his proposed STL system. Under such circumstances, it must be concluded that Bryan had no legitimate basis for certifying his financial qualifications, had every reason to know that he did not and, accordingly, falsely certified that he was financially qualified.

## ULTIMATE CONCLUSIONS

129. The issue presented is whether Bryan had adequate documentation of the availability of sufficient funds at the time he certified and filed his Application to meet the costs of constructing and operating for three months without revenue the station he proposed. Based upon the record developed in this proceeding it must be concluded that Bryan has failed to carry his burden of demonstrating that the documentation he had on hand was adequate to meet the Commission's requirements and, likewise, has failed to carry his burden of demonstrating that the funding upon which he relied was sufficient to meet the costs that he would incur in constructing and operating the station he had proposed to construct and operate. Bryan's failure to establish his financial qualifications was due largely to his failure to exercise reasonable and customary efforts to ascertain his costs and his failure to secure documentation of the proposed loan, adequate to meet the Commission's explicit documentation requirements. Accordingly, it must be concluded that Bryan was not financially qualified at the time he so certified. Inasmuch as he was not then financially qualified, he cannot be found to be financially qualified, currently, and could not in any event, inasmuch as his proposed funding is insufficient to meet his established costs. Finally, given the knowledge of the Commission's certification requirements that must be attributed

to him, it must be concluded that Bryan falsely certified his financial qualifications. Accordingly, it must be concluded that Bryan cannot be found to be basically qualified.

WHEREFORE, premises considered, the issues added Darrell Bryan, pursuant to Memorandum Opinion and Order (94M-296), released April 25, 1994, should be RESOLVED ADVERSELY in accordance with the forgoing conclusions, the above referenced Application of Darrell Bryan should be DENIED and the above referenced Application of SBH Properties, inc. should be GRANTED.

Respectfully Submitted

SBH PROPERTIES, INC.

By: 

Timothy K. Brady  
Its Attorney

P.O. Box 986  
Brentwood, TN 37027-0986  
(615) 371-9367

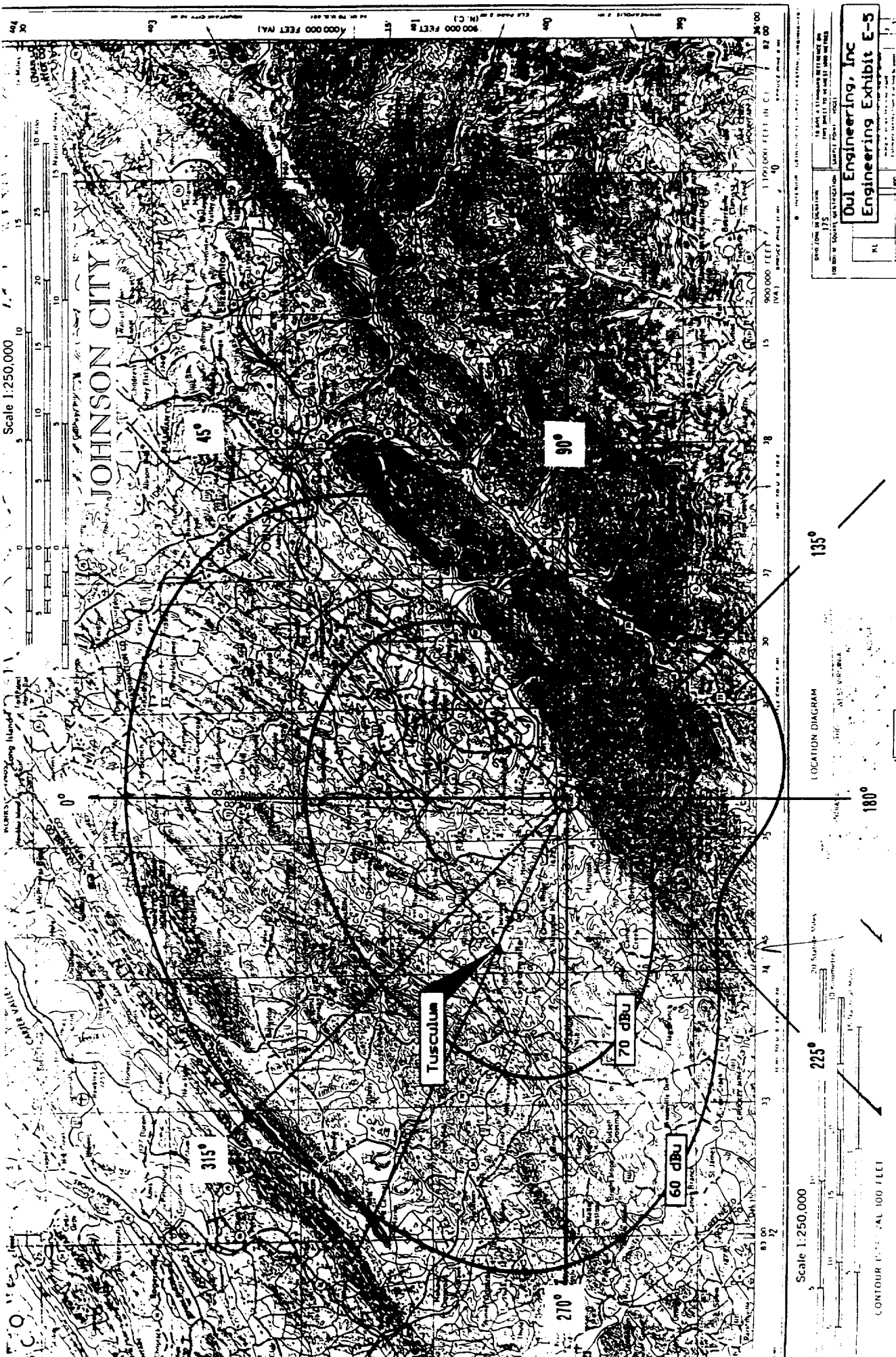
October 3, 1994

APPLICATION FOR NEW FM BROADCAST STATION CONSTRUCTION PERMIT  
DARRELL BRYAN, INDIVIDUAL APPLICANT  
TUSCULUM, TENNESSEE (CHANNEL 276A)

EXHIBIT NO. 2  
DIVESTITURE STATEMENT

Darrell Bryan, as stated in Exhibit No. 1, owns 100% of the common voting stock of Burley Broadcasters, Inc., licensee of Radio Station WSMG-AM, Greeneville, Tennessee.

In the event Darrell Bryan is awarded the construction permit for Channel 276A at Tusculum, Tennessee, through comparative hearing, Mr. Bryan will divest of all of his interests in and connections with Radio Station WSMG and will resign as that station's general manager. Mr. Bryan will, upon the grant of a construction permit, through comparative hearing, commence to function as the new station's general manager on a full-time (40 or more hours per week) basis.





Approved by OMB  
3060-0031  
Expires 06/30/95

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

FCC 314

FCC/MELLON OCT 29 1993

FOR  
FCC

APPLICATION FOR CONSENT TO  
ASSIGNMENT OF BROADCAST STATION  
CONSTRUCTION PERMIT OR LICENSE

11-01-93 8350495 006

(Please read instructions before completing this form)

FOR MASS MEDIA BUREAU USE ONLY

FILE NO.

931029CK

## Section I - GENERAL INFORMATION

1. APPLICANT NAME			
DEFUNIAK COMMUNICATIONS, INC.			
MAILING ADDRESS (Line 1) (Maximum 35 characters)			
P. O. BOX 430			
MAILING ADDRESS (Line 2) (if required) (Maximum 35 characters)			
CITY		STATE OR COUNTRY (foreign address)	ZIP CODE
JEFFERSON CITY		TN	37760
TELEPHONE NUMBER (include area code)		CALL LETTERS	OTHER FCC IDENTIFIER (F APPLICABLE)
615-475-3825		WNDD-FM	
FOR MAILING THIS APPLICATION, SEE INSTRUCTIONS FOR SECTION 1			
2. A. Is a fee submitted with this application?			<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
B. If No, select the appropriate box to indicate reason for fee exemption (see 47 C.F.R. Section 1.1112) or reason a fee is not applicable and go to Question 3.			
<input type="checkbox"/> Governmental Entity <input type="checkbox"/> Noncommercial educational licensee <input type="checkbox"/> Other (Please explain):			
C. If item 2.A. is Yes, provide the following information:			
Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in the "Mass Media Services Fee Filing Guide." Column (B) lists the Fee Multiple applicable for this application. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number listed in Column (B).			
(1)	(A)	(B)	(C)
	FEE TYPE CODE	FEE MULTIPLE (if required)	FEE DUE FOR FEE TYPE CODE IN COLUMN (A)
	M   P   R	<div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div> <div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div> <div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div> <div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div>	\$ 565.00
			FOR FCC USE ONLY
To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.			
(2)	(A)	(B)	(C)
	<div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div> <div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div> <div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div>	<div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div> <div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div> <div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div> <div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div>	\$
			FOR FCC USE ONLY
ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (2), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.			TOTAL AMOUNT REMITTED WITH THIS APPLICATION
			\$ 565.00
			FOR FCC USE ONLY
			565.00

**AGREEMENT**

This agreement made and entered into on this 22<sup>nd</sup> day of Sept., 1993, by and between ROBERT F. SCHUMANN, an individual, and DEFUNIAK COMMUNICATIONS. INC., (hereinafter referred to as "Seller") and EATON P. GOVAN, III, and BERTON B. CAGLE, JR., DBA WUSJ-FM (hereinafter referred to as "Buyer").

**WITNESSETH:**

WHEREAS, Defuniak Communications, Inc., is the licensee of WNDD-FM and WJFC-AM both licensed to Jefferson City, Tennessee, and is the owner of the transmitting equipment and certain other assets utilized in the operation of Radio Stations WNDD-FM and WJFC-AM; and Robert F. Schumann is the owner of a certain tract of real estate on which the antenna tower of WJFC-AM is situated; and

WHEREAS, the Seller desires to sell and the Buyer desires to purchase the aforementioned tract of real estate more specifically described in Exhibit B attached hereto and all the personal property and other assets of Defuniak Communications, Inc., utilized by Seller in operating WNDD-FM and WJFC-AM as listed on Exhibit A and made a part of this Agreement.

NOW, THEREFORE,, in consideration of the mutual promises and covenants and upon the terms and conditions herein contained, the parties hereby agree as follows:

1. **SALE AND PURCHASE.** Pursuant to the terms and conditions of this Agreement, upon closing, the Seller will assign, transfer and deliver to the Buyer, and the Buyer will

purchase from the Seller all assets and property of the Seller as shown on the aforesaid Exhibits A and Exhibit B.

2. PURCHASE PRICE. Buyer shall pay to Seller for the purchase of the property and assets the sum of Two Hundred Thousand (\$200,000.00) Dollars. The sum of Ten Thousand (\$10,000.00) Dollars shall be paid by Buyer to Seller concurrently with the execution of this Agreement as a down payment and shall upon closing be credited against the purchase price.

3. CONDITIONS PRECEDENT. Prior to closing, an application for consent to the assignment of the licenses for Radio Stations WNDD-FM and WJFC-AM, issued by the Federal Communications Commission (FCC) from Seller to Buyer shall have been granted by the FCC and become final. The grant of said application shall be final when it is no longer subject to reconsideration, review or appeal by any administrative agency or Court and no protest, request for stay, petition for rehearing or appeal is pending. The parties may mutually agree to waive the requirement that said consent shall have become final.

4. APPLICATION TO THE FCC. Buyer and Seller agree to, concurrently with the execution of this Agreement, file an application with the FCC, requesting consent to the assignment of the licenses for Stations WNDD-FM and WJFC-AM from Seller to Buyer as expeditiously as possible, but no later than 14 days after the execution of this Agreement. All costs and expenses of

CERTIFICATE OF SERVICE

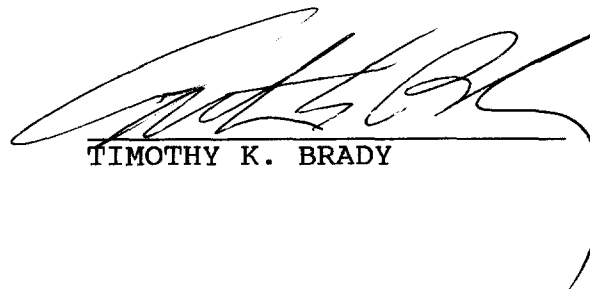
I, Timothy K. Brady, hereby certify that I have this 6<sup>st</sup> day of October, 1994, served a copy of the foregoing Proposed Findings of Fact and Conclusions of Law by First Class mail, postage prepaid, except as otherwise noted, upon the following:

Honorable John M. Frysiak  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, NW, Room 223  
Washington, DC 20554

Robert A. Zuaner, Esq.  
Hearing Branch  
Federal Communications Commission  
2025 M Street, NW, Room 7212  
Washington, DC 20554

J. Richard Carr, Esq. \*\*  
5528 Trent Street  
Chevy Chase MD 20815  
(Co-Counsel for Darrell Bryan)

\*\* By Federal Express



TIMOTHY K. BRADY